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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SALAH ADEL HIJAZI,

Defendant and Appellant.

G043250

(Super. Ct. No. 06HF2464)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Patrick Donahue, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Jeffrey J. Koch, Deputy Attorney General, for Plaintiff and Respondent.¹

¹ The Attorney General does not routinely file a response when appellate counsel files a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). In the

We appointed counsel to represent Salah Adel Hijazi on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against his client but advised the court no issues were found to argue on his behalf. Salah² was given 30 days to file written argument on his behalf, and he filed a 55-page supplemental brief. Pursuant to *Anders, supra*, 386 U.S. 738, to assist the court in conducting its independent review, counsel provided the court with information as to issues that might arguably support an appeal. We have reviewed the information provided by counsel and Salah's supplemental brief. We have also independently examined the record. We found no arguable issues (*Wende, supra*, 25 Cal.3d 436), and we affirm the judgment.

FACTS

Mike Marshall reported to the Newport Beach Police Department an outboard motor, battery, and fuel tank (collectively the motor) had been stolen from a dinghy belonging to his employer, John Woodhull (count 3). Marshall provided the police with a description of various unique identifying characteristics of the motor. Marshall believed the motor had been stolen to be resold so he began checking for a motor with the same description on Craigslist and eBay.

A week or two after the theft, Marshall found an eBay advertisement for a motor matching the description of the stolen motor. He called the police and contacted the eBay seller by email inquiring if there was a serial number on the motor that was listed for sale. The seller told Marshall she did not know where to look for the serial

response to the co-defendant Ahmed Adel Hijazi's brief, the Attorney General commented on the areas noted by appellant's counsel pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*).

² Salah Adel Hijazi and Ahmed Adel Hijazi are co-defendants and share the same last name. For the sake of clarity, we will refer to the Hijazis by their first names and intend no disrespect.

number. The next contact with the seller was by Kirk Jacobi, a Newport Beach Police detective.

The eBay sellers were Beverly and Dennis Sam. Dennis Sam (Sam) was in the business of buying items and selling them on eBay for a profit. He located the motor on www.Recycler.com, contacted the person listed as the seller, and purchased the motor. In court, he identified Salah as the person from whom he purchased the motor. Sam had no contact with Ahmed. Sam indicated he had negotiated with Salah over the price and ultimately purchased the motor for \$1,100, which was less than the asking price. Salah gave Sam a receipt showing the sales price and signed it, "Sal Hijazi." The police recovered the motor from Sam. The motor did not bear a serial number, but there was a strip of adhesive where it appeared a tag had been removed.

Later, Jacobi found another Recycler advertisement for a different outboard motor listing the same telephone number Sam had contacted to arrange the purchase of his motor. Jacobi enlisted the help of Ronald Vallercamp, a Newport Beach sergeant, who had knowledge of boat motors. Vallercamp made two telephone calls to the seller. The seller identified himself as "Sal," and arranged to meet him at a residence in Costa Mesa so Vallercamp could look at the motor, and two additional motors that were also for sale.

Soon after, Vallercamp went to the Costa Mesa residence with Detective Tom Voth, and both posed as potential buyers. Either Vallercamp or Voth was wearing a wire that allowed Jacobi and other detectives to listen in on conversations. When the undercover officers arrived, Ahmed and Salah came out to the driveway where three boat motors, a boat on a trailer, and a jet ski were located. Vallercamp negotiated a price for the three motors with Salah. Ahmed was present but was not part of the negotiations. When the officers suggested they were interested in buying additional motors, two more were produced and offered for sale. A signal was then given, and the other officers who were standing by responded and arrested Salah and Ahmed. Jacobi observed there were

no serial number tags on the five motors that were on the driveway. Police also observed the boat in the driveway was missing its required hull identification number plate.

Police then put an advertisement in the Daily Pilot newspaper indicating the police had recovered some outboard motors and asking any victims to come forward to identify the motors. Paul Secard contacted the police in response to the advertisement and was able to identify one of the recovered motors as a motor that was stolen from his boat the previous month (count 2). Dennis Dalessio discovered his outboard motor was missing sometime a few weeks before. He contacted the police and was able to identify one of the recovered motors as his (count 5), and later at trial identified Ahmed as someone he saw near where he docked his boat. John Cullens also contacted the police about his missing motor. It had been stolen from the stern of his boat sometime the previous summer (count 6). Cullens was able to identify one of the recovered motors as his because of a modification he had made to the motor.

An information charged Salah and Ahmed with six counts of grand theft in violation of Penal Code section 487, subdivision (a) (counts 1-6),³ one count of receiving stolen property in violation of section 496, subdivision (a) (count 7), and one count of misdemeanor possession of a vessel without a hull identification in violation of Vehicle Code section 9872.1, subdivision (a) (count 8).

Prior to jury selection, in open court, the trial court inquired in the presence of both defendants if the attorneys wanted the court to inquire as to any bias a juror might have with respect to persons from Arab countries. The court asked the attorneys if they knew “what country these gentlemen are from?” Before either attorney answered, Salah said, “Kuwait. I was born and raised in Kuwait.” The court commented that Salah spoke English very well and asked counsel how long the defendants had been in the

³ All further statutory references are to the Penal Code, unless otherwise indicated.

United States. Again before counsel responded, Salah stated, “24 years.” The court then inquired of Salah if he was a citizen, and Salah indicated he was a citizen and so were his parents. Ahmed then stated he was also a citizen. The court inquired as to the schooling they had received. Both indicated they had been educated in the United States. Salah stated he attended high school in Costa Mesa, and Ahmed stated he had attended both elementary and high school in the United States. The court indicated it was inclined to discuss these facts with the jury. Both counsel agreed the court should engage in that discussion with the jury and neither defendant voiced any personal objection.

During jury selection the trial court generally advised the jury that it needed to make sure the jurors had “an open mind about the case,” “can sit fairly, listen to the evidence, and give both sides a fair trial.” The court advised the jury that both Salah and Ahmed were originally from Kuwait, but both were citizens, spoke English, and had attended high school in the United States. The court stated it wanted to be sure the jurors could be fair and give both defendants a fair trial, “especially since 9/11.” The court advised the jurors that if any of them had any doubts about whether they could be fair in this case, given they were both from an Arab country, this was something that needed to be addressed during voir dire. During questioning of individual jurors on the issue of bias involving persons of Arab descent, one juror indicated he or she had “lost two dear friends in 9/11.” Upon further inquiry by the court, the juror indicated she felt she “may have a tough time” giving the defendants a fair trial. Another juror indicated he was the victim of a robbery and that one of the assailants was “Arabian.” The juror said he would be unable to disregard the ethnicity issue. The court excused both jurors for cause.

During closing argument, the prosecutor commented to the jurors that if they were not convinced the defendants were guilty of the theft counts, the jury should then consider the receiving stolen property charge.

The jury ultimately convicted Salah on four counts of grand theft (counts 2, 3, 5, and 6) and one count of misdemeanor possession of a vessel without a hull

identification (count 8). Salah and a female friend, Jeanine T. Foor, both submitted lengthy, rather disjointed, sentencing letters to the court. The letters leveled accusations against various persons including trial counsel and law enforcement. There letters also included statements attesting to the character of the two defendants and alleging racial or ethnic bias and a general failure of the justice system.

Prior to sentencing Salah, the trial court commented, “Salah . . . , you know, I told counsel, and I’ll tell you here in open court, you’ve got six or seven misdemeanor convictions. When you were confronted with every one of those prior convictions and facts of this, you didn’t admit guilt to any of them. It’s always your neighbors or the police officers or somebody else that framed you. I mean, in all your other convictions you never take responsibility and they’re low-level misdemeanors, but still you never say I did it. Not once. You explained, you know, by blaming everybody else except yourself. [¶] And even in this case here, you do the same thing, which I don’t know why you don’t accept guilty [*sic*] in anything. You know - - you know, after reading this I was considering state prison for you, but [your counsel] and the probation officer seemed to think that you’re qualified for probation. And based on the facts of this and you haven’t had violence in the background, I’m going to grant both of you probation on it. But that’s my concern with you, [Salah].” Salah replied, “Yes, sir.” The trial court placed Salah on three years formal probation with the usual terms and conditions and on condition he spend 365 days in jail, and pay restitution.

DISCUSSION

Pursuant to *Anders, supra*, 386 U.S. 738, appellate counsel requested this court address the following four issues. Was there substantial evidence of theft, as opposed to receiving stolen property? Was it error to not appoint new counsel for Salah for sentencing? Was trial counsel ineffective in failing to object to the portion of the prosecutor’s closing argument concerning count 7 and CALCRIM No. 3516? Was trial

counsel ineffective for raising the issue in voir dire that Salah was born in Kuwait? We will address each issue in turn and then discuss Salah's supplemental brief.

Substantial Evidence

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314 (*Jones*).)

In a prosecution for grand theft, the evidence on which a defendant is convicted may be purely circumstantial. If the evidence is substantial, it is sufficient to support the judgment of guilt. (*People v. Hallman* (1973) 35 Cal.App.3d 638, 641.) It is well settled that recent possession of stolen property is so incriminating that only slight corroboration is needed to support a conviction. (*People v. Farrell* (1924) 67 Cal.App. 128, 133.)

Here, Salah was in possession of five recently stolen boat motors. All five motors were lacking serial number tags. In addition to this evidence, Dalissio identified Ahmed as someone he had seen on the piers and in the marina where he kept his boat. Substantial evidence supports all four grand theft convictions.

New Counsel

Appellate counsel questions whether the trial court erred in not appointing new counsel for sentencing after Salah and his girlfriend made disparaging comments about trial counsel and claimed they had receipts for the stolen motors. A defendant is not required to file a formal motion to request new counsel, but there must be at least some clear indication by a defendant that he wants a substitute attorney. (*People v. Mendoza* (2000) 24 Cal.4th 130, 157.)

Salah did not clearly indicate he wanted new counsel appointed for sentencing. The only indication Salah had complaints about his counsel was in the sentencing letters he submitted to the court. Those letters laid the blame for Salah's convictions on various parties. Such general blame shifting does not indicate a clear request for new counsel. We agree with the trial court's assessment Salah is habitually unwilling to accept responsibility for his own actions and finds it easier to shift the blame to others. We also note, but for the representations of his trial counsel, Salah may very well have suffered a state prison sentence. We find no error in the court not appointing new counsel for sentencing.

Failure to Object to Prosecutor's Closing Argument

Appellate counsel claims trial counsel may have been ineffective in failing to object to the portion of the prosecutor's closing argument concerning count 7 and CALCRIM No. 3516. Where a defendant may be legally convicted of only one of multiple alternative charges, e.g., theft and receiving stolen property that was taken in the theft, the trial court has a duty to instruct sua sponte that the jury may convict on one, but no more than one, of the alternative offenses. (*People v. Allen* (1999) 21 Cal.4th 846, 851; CALCRIM No. 3516.) In fact, "[w]here a defendant is charged with stealing and receiving the same property, the court should instruct the jury to determine the defendant's guilt on the theft count first, and if it finds the defendant guilty of the theft, to return the receiving verdict unsigned." (*People v. Recio* (2007) 156 Cal.App.4th 719, 726.) The prosecutor's comments during closing argument regarding CALCRIM No. 3516 were proper, and no objection would have been appropriate.

Voir Dire

Appellate counsel also questions whether trial counsel was ineffective concerning raising the issue in voir dire that the defendants were born in Kuwait. An impartial jury is one in which no member has been improperly influenced and every member is capable and willing to decide the case solely on the evidence before it. To

effectuate this right, the prospective jurors are subjected to voir dire questioning under oath to uncover any bias, and the selected jurors are sworn to decide the case based on the evidence presented to them and the instructions given by the court. (*People v. Wilson* (2008) 44 Cal.4th 758, 822; Code Civ. Proc., § 232.)

To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate counsel's performance was objectively deficient and prejudice resulted. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216-217.) To show prejudice, a defendant must show a reasonable probability that but for the attorney's deficient performance, the result of the proceeding would have been different. (*Id.* at pp. 217-218.)

Here, responding to the trial court's inquiry as to the existence of any bias, two jurors admitted they would be unable to set aside their bias against persons of Arab descent and decide the case based solely on the evidence. These two jurors were excused for cause because of their bias. We discern no deficiencies in counsel's performance. Any claim of ineffective assistance of counsel is without merit.

Salah's Supplemental Brief

Salah's 55-page supplemental brief consists of a compilation of documents he randomly annotated and includes a signed handwritten statement. Salah simply repeats many of the issues raised by his counsel in the *Wende* brief. We will not address those issues a second time. Salah also incorporates many of the issues raised by Ahmed in his appeal. To the extent those issues are relevant to Salah's appeal, they will be addressed.

Salah's list of alleged error is lengthy. He asserts, "My public defender was negligent in providing detailed explanations about the US justice and legal system knowing I WAS from another country AND ALL OF THE PLAYERS, JUDGE, DEFENDERS, DA, KIRK JACOBI TOOK ADVANTAGE OF MY LACK OF KNOWLEDGE OF THE US JUSTICE SYSTEM WHICH PREJUDICED ME AND GUARANTEED I WOULD GO TO JAIL FOR CRIMES I DID NOT COMMIT. THEY

COULD GET AWAY WITH IT.” After reviewing the record, we conclude any claim of judicial or prosecutorial conduct fails. Any claim of ineffective assistance of counsel also fails. Matters affecting the adequacy of counsel’s representation which are outside the record cannot be reviewed on appeal. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Additionally, we discern no police misconduct that supports any appellate claim. And, the record does not contain any evidence of discrimination based on national origin. Salah’s brief contains a plethora of other complaints. Although we deem them too numerous to specifically address, each complaint has been reviewed and found to be without merit.

Salah includes within his brief copies of various documents he claims should have been introduced into evidence at his trial. But he does not provide adequate explanation of these documents to allow this court to determine whether it is even conceivable these documents would have been admissible. Without proper foundation, it is unlikely they would have been admitted. No mention of these documents is contained within the record. Salah alleges his speedy trial rights were violated. But again there is no support for this allegation in the record. (*People v. Williams* (1988) 44 Cal.3d 883, 917, fn. 12 [“[t]he scope of an appeal is, of course, limited to the record of the proceedings below”].)

The essence of Salah’s rambling brief is he was innocent and wrongly convicted. He presents a myriad of reasons why this happened, and essentially asks this court to retry his case. This we cannot do. We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) As we explain above the standard of review is well settled—we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. (*Jones, supra*, 51 Cal.3d at p. 314.) Substantial evidence supports all of Salah’s convictions.

DISPOSITION

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.